ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

84-1231

RECEIVED
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SUPREME COURT, U.S.

CHARLES G. STRICKLAND, JR., Warden, Florida State Penitentiary, et. al,

Petitioner,

vs. CASE NO. 84-1239

AMOS LEE KINGS, JR.,

Respondent.

Supreme Court, U.S.
FILED
MAR 25 1985
ALEXANDER L. STEVAS
CLERK

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now Amos Lee King, Jr., the respondent, by his undersigned attorney, and moves this court to allow him to participate in these proceedings as a pauper* In this regard, he states that he is totally insolvent and indigent. He has no money to pay costs and his attorney is and at all times herein has been serving in a pro bono capacity in all respects. The respondent accompanies this motion with a sworn affidavit of insolvency.**

WHEREFORE the respondent asks to be allowed to proceed in forma pauperis herein.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Michael J. Kotler, Esquire, Assistant Attorney General, Suite 804, Park Trammell Building, 1313 Tampa Street, Tampa, Florida 33602, this 9th day of March, 1985.

Baya Harrison

Baya Harrison
317 E. Park Avenue
Tallahassee, FL 32301
(904) 224-9887

*Respondent has been previously allowed to proceed in this capacity in the Florida State Courts, the United States District Court, Middle District of Florida, and the United States Court of Appeals, Eleventh Circuit.

** The insolvency affidavit is attached to the brief in opposition to the petition for writ of certiorari as pages 15 and 16 thereof.

Supreme Court, U.S.
FILED
MAR 25 1985
Alexander L. Stevas, Clerk

STATE OF FLORIDA
COUNTY OF BRADFORD

AFFIDAVIT

I, Amos Lee King, Jr., being first duly sworn, depose and say that I and the respondent; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present are the following:

1. I am an inmate on death row in Florida State Prison near Starke, Florida where I have been incarcerated for the past seven years.

2. Are you presently employed?

No.

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

N/A

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

Feberary & part of March 1977.
Weekly salary approximately 80 dollars.
about 320 dollars a month.

3. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

No.

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

N/A

4. Do you have any cash or checking or saving account?

No.

a. If the answer is yes, state the total value of the items owned.

N/A

5. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

No.

a. If the answer is yes, describe the property and state its approximate value.

N/A

6. List the persons who are dependent upon you for support and state your relationship to those persons.

None.

7. I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

8. Further affiant sayeth not.

Sworn to and subscribed to before me this 5 day of March, 1985.

Randall L. Scoggin
Notary Public

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires Sept. 19, 1987

I certify, verify, swear and affirm that the above answers are true to the best of my knowledge and belief.

Amos Lee King, Jr.
Amos Lee King, Jr.

ORIGINAL

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT OF THE UNITED STATES

CHARLES G. STRICKLAND, JR., Warden, Florida State Penitentary, et. al,	:	
Petitioner,	:	
vs.	:	CASE NO. 84-1239
AMOS LEE KING, JR.,	:	
Respondent.	:	

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondent is a Death
Sentenced Florida
Inmate Proceeing
In Forma Pauperis

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Attorney for Respondent

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RECORD REFERENCES

References to the Petitioners' Appendix attached to their jurisdictional brief (containing the opinions of the court of appeals and the opinion of the district court below) will be by the letter A followed by an appropriate page number or "(A ____)." Reference to the transcript of Respondent's state court trial will be by the symbol "Tr" followed by a page number or "(Tr ___)." References to the transcript of Respondent's hearing on his state court Motion to Vacate Judgment and Sentence filed per Fla. R. Crim. P. 3.850 will be by the letter P followed by a page number or "(P ___)."

REASONS FOR NOT GRANTING THE PETITION FOR CERTIORARI

In Strickland v. Washington, 466 U.S. ___, 104 S.Ct. 2052, (1984), this Court set forth the standards for evaluating a claim of ineffectiveness of counsel in the context of the Sixth Amendment during the course of a trial. Mr. King's claim, as in Washington, surrounds the performance of counsel during the capital sentencing phase under Florida law, and as this Court emphasized, is indistinguishable from an ordinary trial. Hence, effective assistance of counsel under Florida's capital sentencing hearing has as its focal point that counsel ensure that the adversarial testing process works to produce a just result vis-a-vis, whether a sentence of life or death is to be imposed.

On remand, the court of appeals in King v. Strickland, ___ F.2d ___ (11th Cir. 1984), Case No. 82-5306, hereinafter referred to as "King," correctly determined that the two prong test announced in Washington, supra, was satisfied. Petitioner is dissatisfied with this result and merely seeks to review a decision of the court of appeals with which it does not agree.

Petitioners main thrust is to chastise the lower court for allegedly not following this Court's ruling in

Washington and for finding that even under Washington Mr. King was denied constitutionally effective assistance of counsel at sentencing. These complaints are invalid and not a basis for certiorari review.

Rule 17 1(a), Rules of the Supreme Court of the United States, suggests that this Court will grant certiorari, absent a conflict, "when a federal court of appeals ...has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of [the] court's power of supervision." The decision of the Eleventh Circuit herein does not fall within this language and its ruling with respect to Respondent's ineffective assistance of counsel claim is clearly correct and comports with Washington.

Petitioner alleges that the Eleventh Circuit treated Washington as "...something akin to an adivsory (sic) opinion, perfunctorily summarizing this Court's holding... and adhering to its belief that (Washington) was unnecessary to determine that Mr. King was denied effective assistance of counsel." (Petitioner's jurisdictional brief at 6, 7) In other words, Petitioner claims that the Eleventh Circuit ignored this Court's Washington opinion on remand. That assertion is wrong.

The Eleventh Circuit in King acknowledged that its initial judgment in King v. Strickland, 714 F. 2d 1481 (11th Cir. 1983), Case No. 82-5306, had been "...remanded for further consideration in light of (this Court's) decision in Strickland v. Washington, ___ U.S. ___ , 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)." (A 102) The court of appeals then said that "the question before us is whether the Supreme Court's holding in Strickland v. Washington requires a decision that King received effective assistance of counsel at his sentencing". (A 103) Whereupon the Eleventh Circuit stated flatly "having applied the principles announced in Washington, we adhere to our earlier decision." (A 102)

The Eleventh Circuit then proceeded to detail its reasons for adherence to its previous ruling applying the various principles set forth in Washington on each and every page of its Opinion. (A 102-112)

Petitioner next claims that the Eleventh Circuit could "glean" from Washington that there were but "...two components which make up a general ineffectiveness of counsel claim" (i.e. specific acts of deficient conduct which are shown to be prejudicial) and that the court below ignored other aspects of the Washington Opinion. (Petitioner's Jurisdictional Brief at 7) This is blatantly wrong.

Repeatedly citing chapter and verse from this Court's Washington decision, the Eleventh Circuit acknowledged among other things, that "a claim of ineffectiveness must establish that 'counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' Id (referring to Washington) ___ U.S. at ____ , 104 S. Ct. at 2063-65, 80 L. Ed. 2d at 692-93." (A 104) The Eleventh Circuit added:

> The Washington Court followed a standard that requires a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at , 104 S.Ct. at 2068, 80 L.Ed.2d at 698. A defendant challenging a death sentence must show that without the error there is a reasonable probability that "the balance of aggravating and mitigating circumstances did not warrant death." Id. A defendant's failure to establish either the performance or the prejudice component results in denial of his Sixth Amendment claim. (A 105)

The Eleventh Circuit went on to note:

> "In applying the standards of Washington, we note that they differ little from the standards applied in our initial decision in this case. We recognize that King had the burden of establishing both ineffectiveness and prejudice, that the proper standard for

> attorney performance is that of "reasonably effective assistance" that the totality of the circumstances should be reviewed, that specific acts and omissions of counsel must be identified, and that strategic decisions made by counsel after a reasonable investigation into the alternatives deserve deference." (A 106)

Clearly the Eleventh Circuit properly, carefully and respectfully applied the essential tenets of Washington on remand in this case.

Petitioners next argue that the court of appeals based its conclusions (that trial counsel's conduct was deficient and the deficient conduct was prejudicial) on insufficient factual findings. (A 7, 8) In support thereof, Petitioners put forth their version of the facts of the case which they contend evidence the presence of competent counsel during the penalty phase of the State court trial. (A 12-19) In truth, Petitioners themselves fail to paint a true picture of the facts in the case. Respondent therefore sets forth below some of the undisputed facts upon which the court of appeals could have relied.

Mr. King was represented during the penalty phase of his State court trial by an assistant public defender, Mr. Thomas Cole, deceased, who had never before participated in a capital case. (A 21) Another assistant, Mr. Anthony Rondolino, joined the defense team one week before the trial began but did not participate in the penalty phase. (A 20, 21; P 122, 123, 174)

According to the Eleventh Circuit "... the picture of lead counsel Cole painted by Rondolino and Doherty (two lawyers who testified at the Fla. R. Crim. P. 3.850 proceeding to the effect that Mr. King was denied effective assistance of counsel) is of a skilled criminal attorney who for a variety of reasons, some of which were beyond his control, was not ready to proceed to trial." (A 22)

To understand why Mr. Cole was unprepared, it is necessary to point out his (Mr. Cole's) involvement in another case which was being tried at the same time Mr.

King's case was pending. Thus attorney Patrick Doherty testified:

> Q. Would you please explain to His Honor the degree to which Mr. Cole was involved in the Scott case while the Amos Lee King case was pending?
>
> A. Well, I think His Honor probably remembers full well. I think this judge tried that case, but at any rate, Scott was first charged with some kind of burglary wherein the the victim of the burglary was stabbed with a fondue fork through her nose into her brain, causing her to be permanently amnesiac, causing her to be obviously permanently injured. The thrust of Mr. Cole's involvement in that case arose out of this set of circumstances.
>
> Mr. Scott was, according to my recollection, given three different polygraph tests which he passed and indicated that he was innocent on three different occasions. Mr. Cole fervently believed in this person's innocence, this man protested his innocence at every turn in the road. This was probably the biggest case Tom Cole ever had as a criminal lawyer. He worried about it day and night and it was in that set of circumstances that the Amos Lee King case was being prepared, if it was being prepared.
>
> In other words, what I am saying to you at every turn of the road, Amos King's case was being overshadowed by the Scott case. It was a consuming interest of Mr. Cole. It was tried all the way to mistrial on one occasion. It was reset for trial, I believe, on June 24, 1977. Mr. Cole reached the apogee of his career, in most people's estimation, that day. Mr. Scott was found not guilty 11 days later. This case was kicked over for trial, I believe. (P. 183, 184)

And Mr. Rondolino acknowledged Mr. Cole's commitment to the Scott case when he testified that he (Cole) was:

> devoted to that case to the extent of being involved emotionally, psychologically, mentally, pressing forward all of his efforts to the Scott case. (P. 126)

In considering the relevance of Mr. Cole's participation in the Scott trials, appellant asks the court to review the following comments of Justice O'Connor in Strickland v. Washington, 466 U.S. ____, 104 S.Ct. 2052, 2067 (1984) about conflicts of interests:

> One type of actual ineffectiveness claim warrants a similar, though more limited presumption of prejudice. In Cuyler v. Sullivan, 446 U.S., at 345-350, 90 S.Ct., at 1716-1719, the Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of cousel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see e.g., Fed. R. Crim. Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest.

Conflicts of interest can take many forms. From a very practical standpoint, Mr. Cole's deep involvement in the Scott cases conflicted with his professional obligations to respondent. This conflict should therefore be considered in evaluating whether respondent's constitutional right to effective legal assistance was abridged in the instant case.

The Scott case exhausted Mr. Cole. Mr. Doherty testified in this regard:

> Q. (By Mr. Harrison) Did you actually see him during this time?
>
> A. Yes, I did.
>
> Q. Will you describe his - the way he looked?
>
> A. He (Mr. Cole) was physically exhausted. Well, first of all, he was physically exhausted and that was obvious before he mentioned, even mentioned it.
>
> He did tell me that as well. I might point out, four days before the trial, I believe, he lost his glasses. (P. 187)

And Mr. Cole himself made it clear that, he had neither the time nor the energy to adequately assist Mr. King. Thus, as summarized by Mr. Doherty, Mr. Cole is quoted in the trial transcript as telling the state trial judge:

> A. ...starting on page 2149, he (Mr. Cole) says as an officer of the court, I cannot give Amos Lee King a fair trial

today or this week. Now, that was at a pre-trial motion to continue. No one made any even passing reference to that. The importance of that is that he stated it as an officer of the court, and the importance is that he is telling the Court this is no joke, I am not fooling around, period.

Now, on page 2075 of the record, he says I cannot effectively communicate with him, meaning Mr. King hereI cannot effectively communicate with him prepare adequately torepresent him, would renew my motion to withdraw.

Onpage1621, hesaysI don't know what is going on now.

On page 1643, he moves for a mistrial, and then evidently forgets why he moved for a mistrial and says he - I don't know the circumstances of moving for mistrial.

On page 1713 of the record, he says, I can't think anymore.

On page 1812 of the record, he says, Judge, I am beat, I need some sleep.

On page 1839 of the record, the record pretty well discloses during the course of the jury charge conference, Tom was writing his closing argument.

On page 1822 of the record, he says that I haven't spoken to the death penalty to the client, I want a day, give me a day's delay so that I can speak to the witnesses. The Court says we are not going to delay, we are going ahead now.

Hesays again on 1834, I need time to time to talk to the witnesses.

On page 1713 of the record, he says I have got a long cross-examination, I can't think any more. At one point, he asked for a proffer --

THE COURT Wait a minute. At that point, did he not receive a recess, Mr. Doherty?

MR. DOHERTY No, I think at that point, Judge, Doug Prior turned to you and said Mr. Cole always does this in all his trials and this is -- essentially, he is saying Mr. Cole is lying. I didn't see any notation of a recess at that point.

THE COURT What witness was it that he was preparing to cross-examine?

MR. DOHERTY I believe I would have to look at the record to tell you about that.

THE COURT How about checking to see if it was not Dr. Wood, and further, he received a recess when requested, the

last witness.

MR. DOHERTY I understand that the record — is the record in evidence?

THE COURT I don't know what is here, frankly. Everything that is here is in evidence.

MR. DOHERTY Now, on page 1774, he says — this is probably the most interesting one he made, on page 1774 of the record - he says I can't think, Judge, of what I am doing. At that point, Mr. Rondolino turns to the judge and says, apparently Mr. Cole is tired. Now, the fact of the matter is that in this setting, we are now talking about Mr. Cole and the fact that he is exhausted and everybody, of course, in this whole setting knows why he is exhausted, because he just finished the Scott trial 11 days earlier. (P. 184-186)

Due to Mr. Cole's involvement with the Scott trial and his state of exhaustion, he never even discussed the penalty phase of the trial with Mr. King. Thus, Mr. Cole himself said that he "... hadn't spoken to the death penalty to the client." (P 122; Tr. 1822) This is so despite Beavers v. Balcom, 636 F.2d 114, 116 (5th Civ. 1981) wherein the court stated that a thorough, timely dicussion of the death penalty with the client is considered to be one of the "...cornerstones of effective assistance of counsel." Furthermore, in Washington, supra, Justice O'Connor acknowledged that:

> Representation of a criminal defendant entails certain basic duties.
>
> **********
>
> From counsel's function as assistant to the defendant derives the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution..." (104 S.Ct. 2065)

Furthermore, Mr. Cole had important, relevant mitigating evidence that could have been presented to the judge an jury -- evidence he simply ignored. In this regard the Eleventh Circuit found:

> Although Cole presented some mitigating evidence, it is clear that counsel neglected to present other available evidence. The record also suggests this

> failure cannot be deemed a strategic decision taken after a reasonable investigation into the alternatives. This Court has emphasized the importance of pre-trial preparation and investigation. See Washington v. Strickland, 693 F.2d 1243, (5th Cir. Unit B 1982) (en banc), cert. granted, ___ U.S. ___, 103 S.Ct. 2451, 76 L.Ed.2d ___ (1983); Goodwin v. Balkcom, 684 F.2d at 804-05, cert. denied, ___ U.S. ___, 103 S.Ct. 1798, 76 L.Ed.2d 364 (1983); Rummel v. Estelle, 590 F.2d 103, 104, 105 (5th Cir. 1979). Here, counsel admitted he was unprepared for the penalty stage of the trial, because he had not adequately discussed sentencing with his client nor had he carefully searched for mitigating evidence.
>
> These errors occurred at a particularly critical point in the trial.
>
> The sentencing stage of any case, regardless of the potential punishment, is the time at which for many defendants the most important services of the entire proceeding can be performed. ABA Standards on the Administration of Criminal Justice, Sentencing Alternatives and Procedures 5.3(e). The special importance of the capital sentencing proceeding gives rise to a duty on the part of the defense counsel to be prepared for that crucial phase of the trial. Stanley v. Zant, 697 F.2d at 963.

The Eleventh Circuit was most likely referring to Mr. William Brown who was at the courthouse ready to testify that he knew and thought extremely well of the respondent 1977. (P. 234, 235) Mr. Brown, if called upon to testify, would have said that the respondent was a "nice young man" who "respected elderly people" and who was not usually involved in violence or fighting. (P. 235) He would have added that there were many other citizens who would corroborate his opinion of the respondent. (P. 237) But Mr. Brown noted:

> Q. (By Mr. Harrison) Okay. Sir, if you had been asked to appear in court to testify in his behalf as to his character in July, 1977, would you have been able and willing to do so?
>
> A. Yes.
>
> Q. Were you called to testify in that regard for him?
>
> A. No, I weren't, but I was subpoenaed to court, but I didn't have no - do no testifying. The lawyer told me he didn't

need me.

Q. Who was that?

A. I don`t know his name. I don`t know the lawyer`s name.

Q. You were subpoenaed by Mr. Cole?

A. Yes, I guess that was him.

Q. All right, sir. But you did come to court like you had been subpoenaed to do?

A. Yes, I was here in court.

Q. And would you have testified if Mr. Cole had put you on the stand?

A. I would have. (P. 236)

Mr. Willie Scott, another acquaintance of the respondent, was also ready, willing and able to testify that the respondent was honest, non-violent and "...a good boy in my book..." (P. 240) But Mr. Scott noted at the state habeas hearing:

Q. Sir, did you testify at any stage of his trial in the Circuit Court in Pinellas County in July, 1977?

A. No, sir.

Q. Would you have been able and willing to do so had you been asked?

A. Yes, sir, I would have been able and willing.

Q. Were you asked to do so?

A. I got a call on the phone, told me to appear to court. When I got there, I wasn`t called to get on the stand.

Q. You were actually called by someone?

A. Oh, I got a call on my phone, told me to appear in court. I said when I got there, they didn`t call me to tell me to appear on the stand.

Q. You did come to court?

A. Yes. sir.

Q. But the defense lawyer didn`t call you as a witness, right?

A. Yes, sir. (P. 240, 241)

With regard to additional character witness testimony, the Eleventh Circuit found:

"Although King apparently furnished his lawyer with a list of six possible

> character witnesses, there is no indication the lawyer contacted all of them to determine whether their testimony might be helpful." (714 F.2d 1490)

Mr. Rondolino acknowledged the gravity of failing to present all the available character testimony when he testified during the state habeas hearing:

> Q. (By Mr. Harrison) What about the preparation that went into the sentencing phase of this trial? Do you think that was adequate?
>
> A. Well, in retrospect, it does not appear to be.
>
> Q. Why do you say that?
>
> A. Simply because of the number of witnesses that could have been called that weren't, and because of my involvement in cases since that time, it would have been handled in a different manner. (P. 144)

Mr. Doherty confirmed Mr. Rondolino's opinion by stating flatly that the respondent was not afforded adequate representation at sentencing. (P. 212) In addition to noting that Mr. Cole had failed to present available character testimony, Mr. Doherty pointed out that apparently the respondent's father had murdered his (respondent's) mother and "...there were several people who were available to testify to that matter..." (P. 213) Mr. Doherty added that "...this is a serious incident in a person's (referring to respondent's)life" and that "...before a jury returned a death penalty, they ought to know about it." (P. 213) Mr. Doherty also said that (the respondent's mother's murder) is the kind of thing that would affect a person's development." (P. 213)

Mr. Doherty concluded by stating firmly that Mr. Cole's ineffectiveness at sentencing was "substantial" and that the ineffectiveness (considered in the totality of the circumstances of the case) prejudiced the respondent to the following extent:

> Q. (By Mr. Harrison) Sir, do you feel that these deficiencies that you have described in the context of Knight prejudice the defendant?

A. Yes.

Q. Do you feel that they prejudiced him to the extent that there was a likelihood that the deficient conduct affected the outcome of the court proceedings to the defendant's detriment?

A. Yes.

He even went so far as to say:

...I am saying that, yes, I do believe that the circumstances surrounding this young man's growing up are sufficiently bizarre that a jury would have likely returned a verdict asking that his life be spared. This is no small thing when your father kills your mother, I don't think.

Q. No it is not.

A. I think that is fairly traumatic; even in prosecutorial circles, it would be considered fairly traumatic. (P. 230)

The petitioners presented nothing whatsoever during the state habeas corpus proceeding to contradict respondent's expert testimony to the effect that the prejudice in the subject case was so grave as to meet even the strict Knight v. State, 394 So.2d 997 (Fla. 1981) standard. (See King v. Strickland, 714 F.2d at 1485)

Mr. Cole's lack of effectiveness was not limited to ignoring his client and available mitigating evidence. On the contrary, as the Eleventh Circuit recognized in its Opinion, the attorney distanced himself from Mr. King at the penalty phase and presented a 90 second closing statement most harmful to the client. Thus, Mr. Cole stated in part:

I have been practicing law for three years now, Assistant Public Defender, and I have never defended a murder case before. I think that you all understand that the job I had to do this week and you can appreciate what I had to do. (Tr. 2031, 2032)

The Eleventh Circuit found in this regard:

In effect, counsel separated himself from his client, conveying to the jury that he had reluctantly represented a defendant who had committed a reprehensible crime. Reminding a jury that the undertaking is not by choice, but in service to the public, effectively stacks the odds against the accused. Goodwin v.

Balkcom, 624 F.2d at 806, cert. denied, ___ U.S. ___, 103 S.Ct. 1798, 76 L.Ed.2d 364 (1983).

Next, counsel, instead of arguing statutory mitigating circumstances, informed the jury and trial judge:

> "You can convict Amos of a cruel and evil crime" (Tr. 2031, 2032)

This of course is the essence of one of the statutory aggravating circumstances (wherein the crime is "especially heinous, atrocious or cruel") as set forth in Sec. 921.141(5)(b) Fla. Stat. (1974) which may be used to sentence a person to death. And just in case there might be a question of sufficiency of proof of this particular aggravating circumstance, Mr. Cole added:

> "there is no doubt about it." (Tr. 2031, 2032)

Mr. Cole also argued:

> "Murder upsets me very much and I am also human, I have feelings, I have been to Raiford which is the State Prison." (Tr. 2031, 2032)
>
> "Now you might not think Amos deserves to live in our society of civilized people. You might not consider him right now as a human being and what you convicted him of was an evil and gross crime ..." (Tr. 2031, 2032)

Thus as the Eleventh Circuit noted in King v. Strickland, supra:

> "Rather than attempting to humanize King, counsel in his closing argument stressed the inhumanity of the crime." (714 F.2d 1492)

II

CONCLUSION

The matters set forth above show that the Eleventh Circuit in King carefully considered this Court's Washington Opinion on remand. For this reason alone the petition for certiorari should be denied. Furthermore, it should be obvious from the factual aspects of the case that there was more than a sufficient basis upon which the Eleventh Circuit could find specific acts and omissions of trial counsel which severely prejudiced Mr. King to the extent required in

Washington. In ordering a new penalty phase hearing for Mr. King, the Eleventh Circuit did not assure the respondent that he will live; but only that he will have a fair chance and a competent attorney to resist imposition of the ultimate penalty society can impose.

Respectfully submitted,

Baya Harrison

Baya Harrison
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317 East Park Avenue
Tallahassee, FL 32301
(904) 224-9887

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by United States Mail to Michael J. Kotler, Esq., Assistant Attorney General of Florida, Counsel for Petitioners, at Suite 804, The Park Trammell Building, 1313 Tampa Street, Tampa, Florida 33602, this 9th day of March, 1985.

Baya Harrison
Baya Harrison